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No. 78-1180

In the
Supreme Court of the United States
October, Term, 1978

BENJAMIN JULIAN ROSENTHAL,
Petitioner,

vs.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,
Respondent.

REPLY ON CERTIORARI

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MAY IT PLEASE THE COURTS

Respondent Commission has made two arguments against this Petitioner at Points I and III of its Brief. Neither should pass without response. (Point II of Respondent's Brief is addressed to Petitioner Carnow and has already received his response.)

I.

On Pages 4 and 5 Respondent argues that Petitioner has failed to timely raise any Federal questions. Respondent, by the simple device of attaching a few appendices to its Brief, ignores the fact that the entire proceedings are replete with Federal and Constitutional questions

raised both directly and indirectly and in written Briefs, as well as in oral arguments.

The Commission further disregards the critical fact that it is merely an administrative agency of the Illinois Supreme Court and could not usurp the judicial function of imposing the penalty of disbarment. Thus the Illinois Supreme Court was in effect a Court of first impression, since there could be no such discipline without it first having rendered its decision. Only after the Illinois Supreme Court's decision of October 6, 1978 was an Order of Court first entered that ROSENTHAL be disbarred. Only then was it apparent to ROSENTHAL that the Supreme Court, by implication, was treating ROSENTHAL as one who had a *corrupt motive,* or *an intent to bribe* so as to justify disbarment. The Complaint filed by the Commission only contained broad generalized charges and there was no allegation of corrupt motive or intent to bribe. (Appendix E to Petitioner's Brief.) Such an implication could not have been reasonably anticipated by ROSENTHAL in light of the Hearing Panel's findings of fact that ROSENTHAL was ". . . retained by Pecord for a lawful legal purpose, i.e., to obtain a zoning variance . . . but that the variance was denied him because of political implications brought forward by the Ward Committeeman . . . (that) Zima, then the Secretary to the Committee of Building and Zoning was in a position to see to it that Pecord's request for a variance was either granted or denied".

As soon as the Illinois Supreme Court, acting as a Court of first impression, rendered its decision, ROSENTHAL promptly filed his Brief for a Rehearing raising Constitutional questions which were first evoked by the Court's opinion. The Commission in its Brief cites with

approval the case of: *In the matter of John Ruffalo, Jr.,* 390 U.S. 544, which holds that procedural due process requires a Complaint containing fair notice of the alleged offense.

The Constitutional question pertaining to immunity was raised at the time of the initial Hearing and was never waived. (Respondent acknowledges in Footnote 2 that ROSENTHAL had asserted immunity as an affirmative defense before the Hearing Panel. It fails to state that ROSENTHAL submitted a Brief in support thereof, which Brief is part of the record.)

In Point II of its Brief, Respondent acknowledges that Carnow raised Constitutional and Federal questions. Clearly Federal and Constitutional questions raised by Carnow should pertain to ROSENTHAL, as well as vice versa since the case against Carnow and ROSENTHAL arose out of the same factual situation, was heard together and was argued before the Illinois Supreme Court as one case.

In short, Federal and Constitutional questions were timely raised. The cases cited by Respondent Commission are not applicable to a disciplinary case such as this where Constitutional issues arose for the first time when the Illinois Supreme Court rendered its decision.

III.

Finally, the Respondent states that the Court should not intercede in this matter simply because, in the proceedings below, this Petitioner was "afforded notice of the charge and an opportunity to defend". The same is true, however, of the disciplined lawyers whose cases were considered in *Spevack* v. *Klein,* 385 U.S. 411 (1967) and *In re: Ruffalo,* 390 U.S. 544 (1968). Those cases, acknowledged as authoritative by Respondent's Brief, support Petitioner ROSENTHALS's position.

In considering ROSENTHAL's due process rights it should be remembered that the Commission was the agent of the Illinois Supreme Court. Thus, the Commission and the Illinois Supreme Court were in effect both prosecutor and finders of the facts. Is it not fundamental that in such situations Petitioner ROSENTHAL should be entitled to the review of Constitutional questions by at least one reviewing Court lest there be an abandonment of the fundamental safeguards of our jurisprudence?

Respectfully submitted,

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